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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,226	08/01/2001	Kazuyuki Uchida	NAK1-BP60	5849

21611 7590 06/16/2005

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EXAMINER

MITCHELL, JASON D

ART UNIT	PAPER NUMBER
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2193

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,226

Applicant(s)

UCHIDA ET AL.

Examiner

Jason Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-14 and 17 is/are rejected.
- 7) ☐ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to remarks filed on 3/21/05.
2. As per Applicant's request, claims 1-2, 5, 8-10, and 13-14 have been amended, and claim 15 has been canceled. Claims 1-14, and 16-17 are pending in this case.

Response to Arguments

3. **Applicant's arguments on pg. 18 of the response filed 3/21/05 with respect to claims 1-3, 8 and 13-14 have been considered but are moot in view of the new ground(s) of rejection.**
4. **Applicant's arguments on pg. 20, in regard to the 102 rejection of claims 5-7, 10-12 and 15-17 over the Sonderegger reference have been fully considered but they are not persuasive.**

Applicant states:

Again, a dynamic determination of used and unused resources available at the time of the request by a user is not taught nor suggested.

5. Examiner respectfully asserts that Sonderegger clearly discloses a dynamic determination of used and unused resources in col. 21, lines 23-26 with 'the second querying step 190 determines that the resource has already been claimed'. Accordingly the rejections of claims 1-3, 8 and 13-14 are maintained.
6. **Applicant's arguments in the second full paragraph on pg. 20 regarding the rejection of claim 7 have been fully considered but they are not persuasive.**

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Applicant states:

Referring to claim 7, a check script is sent from the transmitting apparatus to the receiving apparatus. The Office Action contended at Column 19, lines 38-43 that a check script reviewing means was provided. This portion of the specification, however, describes the function of a setup step 162 shown in Figure 9. The implementation of simply a setup program for activating a specific resource and the setting of a standard flag which can be communicated between the client terminal and the server is not a check script as defined in our claims.

7. Applicant's arguments amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Further the cited portion of Sonderegger is a high level description of a process whose details are disclosed in figures 10 and 11. The disclosed setup routines 'correspond to the one or more programs' (col. 19, lines 38-40 'sets up resources needed by the application') and is 'used to check whether the receiving apparatus has ... a device function ... necessary for an execution of a corresponding program' (col. 21, lines 5-9 'If another resource ... needs to be claimed by the application ... determines that the resource has not been claimed'). Accordingly the rejection of claim 7 is maintained.

8. Applicant's arguments on pg. 20-21 with respect to claim 16 are moot because claim 15 from which claim 16 depends has been canceled.

9. Applicant's arguments in the first full paragraph on pg. 21, with respect to the 103 rejection of claims 4 and 9 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments in the paragraph bridging pgs. 21 and 22, with respect to the 103 rejection of claims 4 and 9 over Sahai in view of Wrabetz have been fully considered but they are not persuasive.

Applicant states:

While the *Wrabetz et al.* purports to be an efficient use of maintaining the updated current status of resources that are available, both within the user terminal and server and in published information across the network, it does not disclose the technical feature of determining whether the receiving apparatus can execute the program with identification by checking the amount of unused resource.

As indicated below in the rejections of claims 4, and 9, the Warbetz reference is not used to teach 'determining whether the receiving apparatus can execute the program' this function is disclosed in Sahai (col. 6, lines 19-20). Warbetz is used for its teaching of a user providing selection information to the server (col. 6, lines 21-24).

Specification

Applicant's amended title is sufficient to over come the objection, which is consequently withdrawn.

Claim Objections

10. **Claim 16 is objected to because of the following informalities:** Claim 16 depends from canceled claim 15. Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 5-7, 10-12, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,692,129 to Sonderegger et al. (Sonderegger).**

Regarding Claim 5: Sonderegger discloses a transmitting apparatus comprising: program holding means (col. 2, lines 47-49) for holding one or more programs and identifications thereof; resource data holding means (col. 3, lines 1-2) for holding one or more pieces of resource data which correspond to the one or more programs on a one-to-one basis and each define resources necessary for an execution of a corresponding program (col. 3, lines 1-2); request receiving means for receiving either a resource data request (col. 18, lines 29-33) or a program request (col. 18, lines 51-53) from the receiving apparatus and transmitting means for either reading from the resource data holding means a piece of resource data corresponding to an identification contained in the received resource data request and transmitting the read piece of resource data to the receiving apparatus (col. 18, lines 31-33), or reading from the program holding means a program (col. 3, lines 1-4) corresponding to an identification contained in the

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received program request, and transmitting the read program to the receiving apparatus (col. 18, lines 51-53). Further Sonderegger discloses a receiving apparatus comprising: first request transmitting means for transmitting to the transmitting apparatus the resource data request (col. 18, lines 29-33) that contains the identification of a download-target program; resource data receiving means (col. 18, lines 31-33) for receiving the piece of resource data sent from the transmitting apparatus in response to the resource data request; judging means (col. 21, lines 28-31) for judging from the piece of resource data whether the receiving apparatus can execute the download-target program by checking an amount of unused resource capability currently available (col. 21, lines 23-26 'determines that the resource has already been claimed'); second request transmitting means for, when the judging means judges that the receiving apparatus can execute the download-target program, transmitting the program request containing the identification of the download-target program (col. 18, lines 51-53); and program receiving means for receiving a program that is sent from the transmitting apparatus (col. 18, lines 51-53) in response to the program request.

Regarding Claim 6: The rejection of claim 5 is incorporated; further, Sonderegger discloses the one or more pieces of resource data held by the resource data holding means are resource acquisition scripts (col. 14, lines 24-25) used for acquiring resources necessary for executions of corresponding programs, and the judging means judges from a result of a provisional execution of a resource acquisition script (col. 21, lines 28-31) received from the transmitting apparatus whether the receiving apparatus can execute the download-target program.

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Regarding Claim 7: Claim 7 is substantially the same as claim 6, and only the differences are addressed here. The omissions are addressed in the rejection of claim 6.

Sonderegger discloses check script holding means (col. 14, lines 24-25) for holding one or more check scripts which correspond to the one or more programs and are each used to check whether the receiving apparatus has either of a device function and an embedded-program function that is necessary for an execution (col. 20, lines 22-35) of a corresponding program; request receiving means for receiving a check script request (col. 18, lines 51-53) from the receiving apparatus; and transmitting means for reading from the check script holding means a check script corresponding to an identification contained in the received check script request (col. 14, lines 24-32) and transmitting the read check script to the corresponding receiving apparatus. Further Sonderegger discloses request transmitting means (col. 18, lines 51-53) for transmitting to the transmitting apparatus the check script request that contains the identification of a download-target program; check script receiving means (col. 19, lines 38-43) for receiving the check script sent from the transmitting apparatus in response to the check script request; judging means for judging from a result of an execution of the received check script whether the receiving apparatus can execute the download-target program (col. 21, lines 28-32).

Regarding Claim 10: Claim 10 is exactly the receiving apparatus from claim 5 and is rejected with the references noted in claim 5.

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Regarding Claim 11: Claim 11 is exactly the receiving apparatus from claim 6 and is rejected with the references noted in claim 6.

Regarding Claim 12: Claim 12 is exactly the receiving apparatus from claim 7 and is rejected with the references noted in claim 7.

Regarding Claim 17: Claim 17 is exactly the transmitting apparatus from claim 7 and is rejected with the references noted in claim 7.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-3, 8, and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,594,699 to Sahai et al. (Sahai) in view of 'The Unix Man Pages'.**

Regarding Claim 1: Sahai discloses a download system (col. 2, lines 5-7) including a receiving apparatus (col. 2, line 48) for receiving and executing a program and a transmitting apparatus (col. 2, line 47) for transmitting the program to the receiving apparatus.

Sahai further discloses the receiving apparatus comprising: information generating means for generating receiving apparatus information that indicates a use state of resources held by the receiving apparatus that are necessary for program executions

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(col. 5, lines 7-14); request transmitting means for transmitting to the transmitting apparatus a download request (col. 5, lines 22-23) which contains an identification of a download-target program (col. 5, line 24) and the generated receiving apparatus information (col. 5, lines 22-23); and program receiving means for receiving a program that is sent from the transmitting apparatus in response to the download request (col. 5, lines 45-46).

Sahai further discloses the transmitting apparatus comprising: program holding means for holding one or more programs and identifications thereof (col. 6, line 12-19); resource information holding means for holding one or more pieces of resource information (col. 6, lines 17-19) which correspond to the one or more programs on a one-to-one basis and each indicate resources necessary for an execution of a corresponding program; request receiving means for receiving the download request (col. 5, lines 22-26) from the receiving apparatus; and judging means (col. 6 lines 14-16) for judging, from a piece of resource information corresponding to one of the one or more programs with the identification contained in the download request and the receiving apparatus information contained in the download request, whether the receiving apparatus can execute the program with the identification; and program transmitting means (col. 6, lines 22-23) for transmitting to the receiving apparatus the program with the identification when the judging means judges that the receiving apparatus can execute the program.

However, Sahai does not explicitly disclose checking the current status of resources, but does disclose determining the client capabilities using standard system calls (col. 5,

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lines 7-14 'The capabilities of the client machine 12 are then determined ... using conventional system calls').

The Unix Man Pages teach a standard system call, *top* for determining the current state of client resources (DESCRIPTION 'top provides an ongoing look at processor activity in real time').

It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the 'top' call taught in The Unix Man Pages as one of the system calls disclosed in Sahai (col. 5, lines 7-14) to determine the current status of required resources. Because one of ordinary skill in the art would have been motivated to ensure that the clients current capacity could handle the download (col. 6, lines 35-38 'Given the CPU processing power ... the server 10 can determine whether the client 12 with be able to cope ... with the media decoding on a timely basis').

Regarding Claim 2: Claim 2 is substantially the same as claim 1, and only the differences are addressed here. The omissions are addressed in the rejection of claim 1.

Sahai discloses program holding means (col. 6, lines 14-15) for holding a plurality of programs and identifications thereof, the plurality of programs achieving basically the same function (col. 6, line 19) and requiring resources that satisfy different conditions; and judging means (col. 6, lines 19-20) for judging, from two or more pieces of resource information corresponding to two or more programs that have the identification contained in the download request, among the plurality of programs and the receiving

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apparatus information contained in the download request, whether the receiving apparatus can execute the two or more programs.

Regarding Claim 3: The rejection of claim 2 is incorporated, further, Sahai discloses when judging that the receiving apparatus can execute any of at least two programs among the two or more programs, the judging means selects one out of the at least two programs (col. 6, lines 17-21), and the program transmitting means transmits the selected program to the receiving apparatus (col. 6, lines 22-23).

Regarding Claim 8: Claim 8 is exactly the receiving apparatus from claim 1 and is rejected with the references noted in claim 1.

Regarding Claim 13: Claim 13 is exactly the transmitting apparatus from claim 1 and is rejected with the references noted in claim 1.

Regarding Claim 14: Claim 14 is exactly the transmitting apparatus from claim 3 and is rejected with the references noted in claim 3.

5. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,594,699 to Sahai et al. (Sahai) in view of USPN 5,442,791 to Wrabetz et al. (Wrabetz) and further in view of 'The Unix Man Pages'.

Regarding Claim 4: The rejection of claim 2 is incorporated; further, Sahai discloses limitations as described in claim 2 as noted in the rejection of claim 2, but does not disclose the transmitting means transmitting to the receiving apparatus at least two pieces of characteristic information, or receiving a selection result, or transmitting a program corresponding to the selection result. Further Sahai does not disclose the

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receiving apparatus comprising selection receiving means for presenting the user the at least two pieces of characteristic information, or allowing the user to select one among the at least two pieces of characteristic information or selection result notifying means. However, Sahai does disclose consulting the user's preferences (col. 4, lines 25-27) but they are included in the initial request, not requested at the time the decision is required. Wrabetz teaches a download system wherein when the judging means judges that the receiving apparatus can execute any of at least two programs among the two or more programs, the program transmitting means transmits to the receiving apparatus at least two pieces of characteristic information (col. 6, lines 21-24) that each indicate characteristics at an execution of a corresponding one of the at least two programs, and receives a selection result (col. 7, lines 58-59) which is sent from the receiving apparatus in response to the at least two pieces characteristic information, and transmits a program corresponding to the selection result (col. 7, lines 51-52) to the receiving apparatus. Wrabetz further teaches the receiving apparatus comprising: selection receiving means for presenting to a user the at least two pieces of characteristic information (col. 6, lines 21-24) received from the program transmitting means, allowing the user to select one among the at least two pieces of characteristic information (col. 6, lines 21-24), and receiving a selection result from the user (col. 7, lines 55-56); and selection result notifying means notifying the transmitting apparatus of the selection result (col. 7, lines 58-59). Wrabetz teaches this in an analogous art for the purpose of determining which resources to provide in response to a resource use request (col. 6, lines 21-23).

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It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the method, taught by Wrabetz, of presenting the user with a selection of at least two possible programs (Wrabetz col. 6, lines 21-24), in the download system disclosed in Sahai when there are a number of media assets on the server which meet the requested criteria (Sahai col. 6, lines 17-21).

The modification would have been obvious because one of ordinary skill in the art would have been motivated to receive user preferences with minimum overhead in the initial download request (Sahai col.3, lines 19-23).

Regarding Claim 9: Claim 9 is substantially the same as claim 4 and is rejected under the same rationale noted in claim 4.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. 6,401,238 to Brown et al. discloses a method for deploying an application to client computers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Mitchell whose telephone number is (571) 272-3728. The examiner can normally be reached on Monday-Thursday and alternate Fridays 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jason Mitchell
6/2/05



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